

Constitutional Democracy in Crisis? The Right-Wing Populist Surge

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Mark A. Graber So 26 Aug 2018

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Constitutional Democracy in Crisis? (edited by Sandy Levinson, Mark Tushnet and me), which has just been published by Oxford University Press, documents the right-wing populist surge taking place across the globe. Right-wing populists now govern in Turkey, Poland, Hungary, India, South Africa, Israel, and the United States. They are gaining ground in almost every European nation outside of Scandinavia, most notably in Germany, France, the United Kingdom, Italy, the Netherlands, and Austria. Right-wing populists are weakening the European Union. Even Australia has not been immune to the siren call of a more ethnic and religious nationalism. When empowered, right-wing populists take aim at the inclusive, secular and cosmopolitan commitments of contemporary constitutionalism, and the independent courts designed to foster those commitments.



Many of the thirty-eight essays in the volume by very distinguished contributors note that economics is an obvious cause of the right-wing populist surge. "Populism," *Samuel Issacharoff* writes, "responds to the perceived failure of democratic regimes to protect the laboring classes from economic distortion. The combination of the economic downturn after 2008 and the impact of globalized trade on wages in the advanced industrial countries tarnished the legitimacy of democratic regimes as an insider's game, a means of institutionalizing elite prerogatives." Numerous essays on particular regimes agree that populist appeals gain currency during economic hard times and are particularly powerful in the most economically depressed regions. *Jennifer Hochschild* observes that Trump supporters come from those parts of the United States experiencing high rates of addiction, high mortality rates, and low prospects of economic improvement. These demographics of the right-wing populist surge support *David Law* and *Chien-Chih Lin's* suggestion that constitutional democracy is an acquired taste of people whose bellies are full.

The question nevertheless remains why economics is privileging efforts to activate right-wing populist identities. *Mark Tushnet* points out that populism comes in right-wing and left-wing flavors. Left-wing populist movements fared well in the United States in the wake of the Great Depression. Their present failure cannot be explained by economics alone.

One possible answer is that cosmopolitan identities based on commitments to universal human rights that underlie much contemporary constitutionalism are too thin for most citizens. *Sandy Levinson* notes that Wilsonian self-determination, often seen as foundational for constitutional democracy, implies a people united by racial, religious, ethnic, or cultural norms. Most democratic citizens, *Kim Lane Scheppele* maintains, are localists who "see their neighbors and their nation as the horizon of politics." Ethnic divisions explain much electoral violence in sub-Saharan Africa and the problems launching

democratic constitutionalism in that region. Right-wing political entrepreneurs in the United States have historically used racial and ethnic fears to mobilize populists for some very anti-populist causes.

The relationships between globalization and contemporary constitutional projects may underlie right-wing populist surges. Globalization, what *Lorraine Weinrib* describes as the postwar constitutional paradigm, and what others refer to as transformative constitutionalism share commitments to cosmopolitan identities. The same global elites who sponsor neoliberal economic policies champion independent courts, often champion secularization, and favor formally inclusive policies, particularly when doing so rejects traditional gender and sexuality norms. Globalism in practice, however, has more often undermined than buttressed constitutional commitments to robust political freedoms and broadly shared commercial prosperity. These failures empower right-wing political entrepreneurs who by highlighting the political and normative affinities among globalization, the postwar constitutional paradigm, and transformative constitutionalism successfully channel opposition to the first into movements against the second and third.

The relationship between globalization and contemporary constitutional developments has a dark side. Many cosmopolitans are far more committed to globalization, independent courts, and secularism than robust political freedoms, broadly shared commercial prosperity, and more robust conceptions of inclusivity. In his acclaimed *Towards Juristocracy*, *Ran Hirschl* asserts that a neoliberal commitment to transnational open markets was the central concern of those who inaugurated what was mistakenly labelled transformative constitutionalism. *Michaela Alterio* and *Roberto Niembro* provide a variation on this theme when discussing how the Mexican elites who championed transformative constitutionalism in practice proved far more interested in preserving a favorable climate for foreign investment than promoting broadly shared commercial prosperity. *David Schneiderman* details how such regimes as Ecuador, Columbia, and South Africa simultaneously adopted a transformative constitution and signed neoliberal trade agreements, either because political leaders thought the two consistent or simply because they needed the foreign investment. Over time, the neoliberal trade agreements proved stronger, directly limiting national power to achieve transformative ends when those ends conflicted with foreign investors and indirectly limiting national power through debt practices that severely constrained domestic spending.

The resulting ambivalent and ambiguous relationship between the cosmopolitan commitments inherent in the postwar constitutional paradigm and transformative constitutionalism and the cosmopolitan commitments inherent in globalization facilitate right-wing ethnonational appeals while complicating the task of left-wing political entrepreneurs. All right-wing populist leaders must do is mobilize citizens against cosmopolitans and cosmopolitanism. Political entrepreneurs on the left must mobilize citizens against some cosmopolitans but not others, and some versions of cosmopolitanism but not others. Conservative elites enjoy the relatively simple task of persuading less fortunate citizens that the same persons and principles responsible for the company leaving town are responsible for immigrants taking what few jobs remain and uprooting long-established cultural norms. If the problem is foreign influence, then foreigners should be prohibited from entering the country and long-standing national practices, including

traditional religious practices, should be restored. If the problem is cosmopolitan elites, then given the strong practical and theoretical connections between elite commitments to globalization, secularism, and inclusiveness, ordinary people when rejecting globalization should reject related commitments to secularism and inclusiveness. Or so the argument easily goes. More progressive political entrepreneurs have a more daunting task. They must first distinguish conservative and progressive versions of globalization that may not be obviously distinguishable for many persons. They must then distinguish the not-to-be-trusted cosmopolitan proponents of neoliberalism from the trusted cosmopolitan proponents of broadly shared commercial prosperity, secularism, and inclusiveness, even though those two camps are hardly mutually exclusive. Given the importance of quick soundbites in contemporary democratic politics, persons mobilizing ethnocentric political identities clearly have an easier task at present than those mobilizing cosmopolitan identities.

Constitutional design is unlikely to prove much of a bulwark against right-wing populism. Political entrepreneurs promising a more sectarian regime that will privilege persons on the basis of their ancestry, race, and religion, and will enforce more traditional gender and sexuality norms, are gaining an increased share of the vote across the globe. Right-wing populists in office who curtail democratic liberties and undermine independent courts remain electorally popular, in part because these measures are often directed at minorities and in part because right-wing populists reshape the electoral universe to privilege their re-election. Still, even without electoral manipulation, the number of voters supporting the Trumps, Orbáns, and Netanyahus of the world will exercise substantial influence on governmental practices in a constitutional democracy, no matter what the particular constitutional rules. The real challenge for the persons committed to robust political freedoms, broadly shared commercial prosperity, secularism, inclusiveness, and independent courts is finding political ways to reduce the number of right-wing populists, not finding legal ways to reduce their present influence.

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